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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/508,805	05/31/2000	ILAN BEN-OREN	22350/12	1999

7590

10/09/2003

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NEW YORK, NY 10016

EXAMINER
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NASSER, ROBERT L

ART UNIT	PAPER NUMBER
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3736

DATE MAILED: 10/09/2003

19

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/508,805

Applicant(s)

BEN-OREN ET AL.

Examiner

Robert L. Nasser

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on 15 July 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 112-190 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 179 is/are allowed.
- 6) ☐ Claim(s) 112-126, 128-134, 136-149, 152-162, 166-177 and 180-190 is/are rejected.
- 7) ☒ Claim(s) 117, 127, 135, 150, 151, 163-165 and 178 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 112-126, 128, 129, 130-134, 136-149, 151, 158-161, 166-176, and 180-190 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eckstrom et al in view of Sauke et al. Eckstrom et al has a device for measuring a  $^{13}\text{CO}_2/^{12}\text{CO}_2$  ratio including first and second sample chambers that are thermally and pneumatically connected and first and second reference chambers that are thermally and pneumatically connected, and one (figure 1) or two (figure 3) including a chopper or electronic modulation means, and filters 44 and 46, for resolving the light source into the proper spectral ranges. The reference gas of Eckstrom does not contain the isotopes to be measured. Sauke et al shows a similar system where the reference gas does have the isotopes. Hence, it would have been obvious to modify Eckstrom to use the reference gas of Sauke, as it is merely the substitution of one known reference gas for another. The examiner takes official notice that using one detector or separate detectors for each measuring signal is well known. With respect to claims 130-134, 136, and 141-146, the examiner takes official notice that the recited methods or known methods for analyzing two optical measuring signals for measuring two different components with two wavelengths. With respect to claim 160, the examiner takes

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official notice that a nasal cannula is a known method of providing a gas sample for analysis.

Claim 162 is rejected under 35 U.S.C. 103(a) as being unpatentable over Eckstrom in view of Sauke et al as applied to claims 112-124, 128, 129, 130-134, 136-149, 151, 158-161, 166-176, and 180-190 above, and further in view of Kiefer. Kiefer teaches only using the alveolar part of the air to ensure an accurate reading. Hence, it would have been obvious to modify the above combination to only use alveolar air, to ensure an accurate reading. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action.

Claims 127, 135, 150, 151, 163-165, 117, and 178 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 179 is allowable.

Applicant's arguments filed 7/15/2003 have been fully considered but they are deemed moot in view of the new grounds of rejection.

Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the

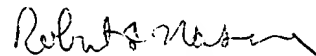
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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert L. Nasser whose telephone number is (703) 308-3251. The examiner can normally be reached on Mon-Fri, variable hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (703) 308-3130. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.



Robert L. Nasser  
Primary Examiner  
Art Unit 3736

RLN

**ROBERT L. NASSER**  
**PRIMARY EXAMINER**

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